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Supreme Court, U.S.
FILED

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Case No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AARON GLASSCOCK,
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

Petition for Writ of Certiorari from
the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Stephen N. Bernstein
Attorney for Petitioner
Post Office Box 1642
Gainesville, Florida 32602
(352) 373-9555

49 pp

QUESTIONS PRESENTED

A. Whether the District Court committed an abuse of discretion in denying the Petitioner's right to call informant witnesses from the prison who could testify as to exculpatory statements made against penal interest by the leaders of the conspiracy and that the petitioner had no knowledge of that conspiracy or its real goal pursuant to Federal Rule of Evidence 804(b)(3).

B. Whether the District Court erred in denying a dismissal on double jeopardy grounds after reversing its pretrial order on the admissibility of testimony referred to in question A after the completion of opening statements and compelling the Petition to either waive the issue for review or move for a mistrial.

C. Whether the district Court erred in allowing the Government to impeach the Petitioner with evidence of his previous attorney's comments in an opening statement made during a prior trial.

D. Whether the District Court erred in denying the Judgment of Acquittal Motion based upon insufficiency of evidence as to the Petitioner's knowledge of the alleged conspiracy.

PARTIES TO THE PROCEEDING

The following is a list of those people who have an interest in the outcome of this particular case:

Counsel for Petitioner, Stephen N. Bernstein

Assistant United States Attorney, Robert Davies

United States Attorney, P. Michael Patterson

Petitioner, Aaron Glasscock

United States District Judge, Maurice M. Paul

United States District Judge, Lacey Collier

Trial Counsel in the District Court for Petitioner,

Ted C. Curtis

Petitioner Counsel for Co-Defendants (Boswell and

Terry Glasscock), Ms. Bonner

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JURISDICTIONAL GROUNDS

This case is before the Court for the first time after Mr. Aaron Glasscock has been sentenced to 360 months. For purposes of this appeal, Mr. Glasscock has followed the District Court's Docket Sheet designations for volumes 1 thru 21 of the record.

Comes Now the Petitioner, AARON GLASSCOCK, by and through his undersigned counsel, and petitions this Court for a Writ of Certiorari pursuant to Rule 14 of the Supreme Court Rules.

STATEMENT OF THE BASIS FOR JURISDICTION

The basis for jurisdiction is review of the decision by the Eleventh Circuit Court of Appeals affirming the Judgment in an unpublished opinion dated November 20, 2001. This decision was confirmed in the Eleventh Circuit Court of Appeals Order denying rehearing on December 27, 2001.

STATEMENT OF THE CASE

Facts

On March 12, 1999 the Petitioner was arrested on an indictment (R-36) for conspiracy to possess with intent to distribute cocaine and possession of a firearm during the commission of a drug trafficking crime. On April 28, 1999, a Superceding Indictment was returned (R-92) and the Petitioner entered a plea of not guilty (R-130).

On May 10, 1999 the Government filed a Motion in Limine to prohibit the Petitioner from eliciting hearsay testimony (R-138). The District Court on June 1, 1999 denied this Motion and specifically allowed the Petitioner to elicit statements against penal interest by leaders of the conspiracy to the effect that although they knew the operation and its details, the Petitioner did not have any knowledge of the conspiracy (R-200). On August 2, 1999 in the midst of trial the District Court changed its ruling on the admissibility of these statements (R-283). The Petitioner had relied

on this pretrial ruling in his opening statement but, the District Court directed that he either waive the issue for appeal or move for a mistrial. Only then did the Petitioner move for a mistrial (R-283). The Petitioner filed his Motion to Dismiss the charges on the basis of double jeopardy (R-296) which was denied by the District Court on August 12, 1999 (R-303).

The first retrial began on August 30, 1999. The Government was allowed to use the opening statement of the Petitioner's counsel from the first trial as evidence for impeachment (R-Vol. 18, 161), (R-328) of the Petitioner. The jury could not reach a verdict and a mistrial was declared on September 3, 1999 (R-327).

On October 4, 1999 a second retrial began and the Government again attempted to use the previous opening statements to impeach the Petitioner but this was denied by the visiting District Court Judge. The jury was unable to reach a

verdict, an "Allen Charge" was given by the Court (R-371) and on October 6, 1999 a mistrial was declared.

On October 12, 1999 the Government announced its intent to call a witness Cory Hunt (R-385) and filed a Motion in Limine to preclude the Petitioner's counsel from testifying in response (R-385). The District Court, on October 15, 1999, granted the Government's motion but allowed Petitioner's request for his counsel to withdraw in favor of being able to fully examine the issue. On December 13, 1999 the trial proceeded with all previous objections renewed as to evidentiary issues made in the previous trials.

The District Court denied the Petitioner's Motions for Judgment of Acquittal (R-486, R-495, and R-496). The Petitioner was found guilty on Count I but found not guilty on Count II. On February 22, 2000 the District Court sentenced the Petitioner to 360 months imprisonment with a special assessment of $100.00 and supervised release for five years (R-542).

Mr. Aaron Glasscock is presently incarcerated upon this sentence.

The United States District Court in Northern District of Florida, Tallahassee Division had jurisdiction of the initial case pursuant to Title 19 U.S.C. Section 3231. The Petitioner appealed to the Eleventh Circuit Court of Appeals pursuant to Title 28 U.S.C. Section 1291 providing that all final decision of the District Court of the United States shall have jurisdiction in the Court of Appeals. The Petitioner raised issues of insufficiency of evidence, a double jeopardy violation due to retrial after a mistrial, prosecutorial misconduct, and errors by the trial court in excluding favorable evidence. In a written opinion, the Eleventh Circuit discussed the last issue but found no abuse of discretion in the District's Court decision to exclude the hearsay evidence, stating that "assuming the conversations by Boswell and Merrold about their role in the drug conspiracy were against the declarant's penal interest, it does not follow that all statements within those conversations are self

inculpatory as part of a fuller confession." In other words, the Eleventh Circuit found that these declarations about the Petitioner's lack of knowledge were collateral statements lacking the reliability that allows the use of the statements as an exception to the hearsay rule. The Petitioner filed a Petition for Rehearing contending that the Eleventh Circuit Panel had misconstrued the specific circumstances surrounding the statements made by Boswell and Merrold i.e. that they were made at different times and different locations and in fact corroborated one another. This Petition was denied.

ARGUMENTS AND CITATIONS OF AUTHORITY

(I) THE DISTRICT COURT ERRED IN EXCLUDING STATEMENTS AGAINST PENAL INTEREST MADE BY THE CONSPIRACY LEADERS THAT THE PETITIONER DID NOT HAVE ANY KNOWLEDGE OF THE CONSPIRACY.

The Government learned that the head of the conspiracy, Greg Boswell, made statements while incarcerated at the Federal Detention Center in Tallahassee, Florida to a fellow inmate, Larry Sangaree, to the effect that Boswell was the money man behind this operation and that the Petitioner was merely the driver for Walter Penick and had no knowledge of the conspiracy (R-138). The Government also became aware that Donald Jake Gamble was incarcerated at the Dixie County Jail with Frank Merold who was the buying agent for Mr. Boswell, and that Mr. Merold described the nature of the operation, his role as the buyer of cocaine and that the Petitioner was simply driving Mr. Penick around and that the he did not know the nature of the conspiracy (R-138). The

Government listed both Sangaree and Gamble as prosecution witnesses against Boswell and Merold but filed a motion in the Petitioner's case to prohibit this same testimony.

This Court held in *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S.Ct. 1038, 1049, 35 L.Ed 2d 297 (1973) that "the hearsay rule may not be applied mechanistically to defeat the ends of justice." The due process clause entitles a criminal defendant to demand, irrespective of the hearsay rule, a trial adequate to separate the guilty from the innocent. *Gomez v, Grear,*. 896 F.2d 252, 254 (7th Cir. 1998). A trial should be a search for the truth and if conspiratorial leaders in a group deny culpability on the part of another individual charged in that group then the statement should be allowed in.

In *United States v. Sarimento-Perez*, 633 F.2d 1092 (5th Cir. 1978) the Court held that the general test for admissibility of a statement against penal interest under Rule 804(b)(3) of the Federal rules of Evidence is that (1) the declarant must be unavailable, (2)

the statement must so far tend to subject the declarant to criminal liability that a reasonable person in his position would not have made that statement unless he believed it to be true and (3) that the statement must be corroborated by circumstances clearly indicating its trustworthiness. Boswell and Merold were unavailable for testimony while they were still subject to criminal liability in their own prosecutions. A statement will satisfy the requirement that it tended to subject the declarant to criminal liability if it would be provable in a trial against the declarant. *United States v. Garris*, 616 F. 2d 626 (2nd Cir. 1980). This was true since the Government did call Mr. Sangaree as a witness against Mr. Boswell and listed Mr. Gamble as a witness against Mr. Merold, but elected not to call him. Clearly the case involving the Petitioner demonstrated that the statements were against the penal interest of the declarants because they were utilized by the Government to subject each of the declarants them to criminal liability.

United States v. Lopez, 777 F.2d 543 (10th Cir. 1985) reversed a conviction where the Defendant sought to introduce the testimony of the attorney of his companion, who made statements that were against the companion's interest that the defendant did not even know about the placement of boxes of cocaine in an automobile in which they traveled together, tending to shift the criminal liability from the defendant to the companion. The companion had failed to appear for trial and there had been an arrest warrant issued for him so he was clearly unavailable to testify The Court ruled that the statement satisfied Rule 804(b)(3) and reversed the conviction. *Lopez* at p. 554

In *United States v. Garcia*, 986 F.2d 1135 (7th Cir. 1993) Garcia was the driver of a truck in which a large quantity of cannabis was located. The passenger entered a provisional guilty plea, reserving his right to appeal the search of the truck, but made a statement that the cannabis belonged to him and that Garcia in fact had no knowledge of it. The District Court there excluded this

testimony but the Appellate Court reversed the conviction, finding that the declarant was unavailable because he still had Fifth Amendment protections, that the declaration was against penal interest and that there were other indicia of reliability such as the fact that the two men were not close friends (*Id* at p. 1140), that the confessor made a voluntary statement and there was no evidence that his statement was made to "curry favor with the authorities" (*Garcia supra*, p. 1140). The statements made by Boswell and Merold were clearly against penal interest while exculpating the Petitioner and were made during their incarceration to other inmates housed with them and not to curry favor with law enforcement. As in *Garcia*, the Petitioners' only defense was that he was unaware of the contraband's presence.

United States v. Matthews, 20 F.3d 538, (2nd Cir. 1994), is helpful to the Petitioner's consideration of when statements are viewed as trustworthy enough to fall within the firmly rooted hearsay exception in Rule 804(b)(3). In *Matthews* a co-defendant

charged with bank robbery made a statement to a girlfriend at a time and in a circumstance when he expected he would never have to contend with such statements in court. These statements implicated not only the declarant but his co-defendant who was on trial. The co-defendant objected to the introduction of these statements through the statement of the girlfriend repeating what she had been told by the co-defendant. The Court found that the co-defendant was unavailable, that the statement was against the penal interest of the co-defendant as well as the person on trial and that the statements were trustworthy because, given the circumstances and content of the statement. They were not made to law enforcement in a coercive atmosphere, but rather were volunteered to a confidant, in the privacy of their residence, the federal holding facilities, as they awaited their own trials.

The *Matthews* court found it important that the statements did not reflect any attempt to minimize the culpability of the declarant presented by Sangaree and Gamble, and did not reflect

any minimizing of the roles of Boswell and Merold in their disclosures.

In *United States v. Costa*, 31 F.3d 1073 (11th Cir. 1994), the Government introduced the confession of a co-defendant that implicated the defendant on trial in a circumstance where a co-defendant was refusing to testify despite having been previously convicted. The Court held that the statement was not against penal interest since it was made while in custody but could readily be viewed as an attempt to implicate another person in a desire to curry favor with the authorities. The Court noted "on the other hand, the same words spoken under different circumstances, e.g., to an acquaintance, would have no difficulty in qualifying", citing to the advisory committee notes to Rule 804(b)(3). Under that analysis in *United States v. Costa*, the Petitioner's situation meets the reliability standard and satisfies the concerns of *Sarmiento-Perez*. Furthermore, it is argued that the District Court committed

an abuse of discretion in denying the Petitioner's right to call witnesses who could testify as to such exculpatory statements.

(II) THE DISTRICT COURT ERRED IN DENYING THE PETITIONER'S MOTION TO DISMISS ON DOUBLE JEOPARDY GROUNDS AFTER REVERSING ITS PRETRIAL ORDER AND COMPELLING THE PETITIONER TO EITHER WAIVE ANY PREJUDICE OR MOVE FOR A MISTRIAL.

The Petitioner relying upon the pretrial ruling allowing Sangaree and Gamble to testify made an opening statement to the jury focused on these facts. The Government put on its case and the Petitioner began to present evidence on the second day. The District Court, without any surprise development in the evidence, suddenly changed its position on the admissibility of this testimony and so advised the parties. The District Court acknowledged that this was a change of the earlier position replied on by the Petitioner, and allowed the Petitioner to either proceed forward, waiving any appeal based on this change in ruling, or to move for a mistrial.

Ordinarily, the Double Jeopardy Clause does not bar retrial after the entry of a mistrial upon the defendant's motion. *United States v. Torkington*, 874 F.2d 1441, 1444 (11th Cir. 1989).

However, if a defendant is compelled to move for a mistrial in a case where the prosecution intentionally goaded him into such a motion, then he is entitled to Double Jeopardy Protection. *Torkington* at footnote 7. Any inquiry into the prosecution's intent is, for the most part, to be inferred from objective facts and circumstances. *Oregon v. Kennedy*, 456 U.S. 667, 679-80, 102 S.Ct. 2083, 72 L.Ed 2d 416 (1982). This Court has suggested that "goading" may exist where the conduct of the Government in bringing about a mistrial is due to "gross negligence or intentional conduct." *United States v. Serra*, 882 F.2d 471, 473 (11th Cir. 1989). *United States v. Fern*, 155 F.3d 1318 (11th Cir. 1998).

United States v. Sammaripa, 55 F.3d 433 (9th Cir. 1995) held that jeopardy attaches when the jury was impaneled and sworn. In that case the prosecutor voiced a Batson challenge after jury

selection was already completed and the trial court then granted a mistrial in a circumstance where there was no "manifest necessity for a mistrial" because the prosecutor should have made that challenge before the jury was sworn. In the Petitioner's case, clearly the stage was set by the trial court's pretrial ruling and there was no manifest necessity for changing that ruling since there had been no change in the factual predicate after the jury was sworn and during the presentation of the evidence. It is here asserted that this is comparable to the consideration of a prosecutor voicing a Batson challenge after the jury had been sworn instead of during the jury selection process when it normally should be accomplished.

The only circumstance in which the defendant's consent to a mistrial does not operate as a wavier of his right to claim double jeopardy is where the prosecution or the judge intentionally provokes the defendant to request the mistrial. *Oregon v. Kennedy*, 456 U.S. 667, 102 S.Ct. 2083, 2091,72 L.Ed 2d 416 (1982); *United States v. Miller*, 742 F.2d 1279 (11th Cir. 1984). In *United States v.*

Miller, the Court pointed out that the Appellant's Hobson's Choice was created by his attorney's actions and was the result of the actions of the defense as opposed to the Court. We have exactly the opposite situation in the case at bar, where it is the District Court's pretrial announcement that was relied upon in the opening statement and in preparation of the entire defense that set this stage. It was the sudden and unanticipated change in evidentiary ruling by the District Court that caused the Hobson's Choice that the Petitioner faced, as opposed to the circumstance this Court found in *Miller*.

The gravamen here is the District Court's requirement that the Petitioner either forego his appeal on this evidentiary matter after having the prejudice of his lawyer's opening statement committing to the jury the employment of this defense, or move for a mistrial. 1 SR3 p. 6.

The District Court made a point of directing that Petitioner's counsel talk with him about the mistrial issue and " if you don't ask

for one, it has got to be on the record that your client understand that this is not something that could ever be raised on any appeal". 1 SR3 p.9. This was also reflected in counsel's announcement to the Court that "yes Your Honor I have sat down and discussed with him the pro's and con's of this motion, that if we went forward we would be waiving this particular issue on appeal and, based on that discussion, he is consenting to my moving for a mistrial at this point."

The Court: that is true, Mr. Glasscock?

The Defendant: Yes sir.

The Court: The motion is granted. (1 SR3 p. 9, 10)

The Petitioner was given the ultimatum that he either would have to forgo his appeal issue on the admissibility of such evidence and the prejudice caused by his announcement to the jury that he would rely on this testimony or he would have to consent to the mistrial. The issue of "goading" is recognized as being important especially "if it intrudes into the unfettered exercise of a

constitutional guarantee as essential as the right of confrontation." *United States v. Serra*, 882 F.2d 471 (11th Cir. 1989).

There is authority that, where Defendant's mistrial motion is necessitated by judicial or prosecutorial impropriety designed to avoid an acquittal, reprosecution be barred. *United States v. Totateo*, 377 U.S. 463, 468, note 3, 84 S.Ct 1587 at 1590, 12 L.Ed 2d 448 (1964). The Double Jeopardy Clause protects a Defendant against governmental actions intended to provoke a mistrial request and thereby subject the Defendant to the substantial burdens imposed by multiple prosecutions, while affording the prosecution a more favorable opportunity to convict the Defendant. *United States v. Kessler*, 530 F.2d 1246 (5th Cir. 1976) at page 1255. In this unique situation the objective facts and circumstances resulted in a pressure to the extent that the Petitioner was "goaded" into moving for a mistrial. Such a retrial should be barred by double jeopardy.

(III) THE DISTRICT COURT ERRED IN DENYING THE PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL

BASED ON INSUFFICIENCY OF THE EVIDENCE TO SHOW THE PETITIONER'S KNOWLEDGE OF THE NATURE OF THE CONSPIRACY.

There was no direct testimony that the Petitioner had any knowledge as to what Greg Boswell and his group were really doing. The Petitioner testified that he was unaware of this group's efforts to purchase cocaine in Florida and sell it in Kentucky (R20-186) or that the truck had a secret compartment for the purposes of hiding either drugs or money. He simply drove Penick, in his father's truck, at his father's insistence, at a time when he thought Penick and Merold were looking at real estate opportunities in Florida (R20-187). The Petitioner was a full time college student who was well thought of and respected in the community in which he grew up (R20-158, 170, 172).

In *United States v. Deen*, 59 F.3d 1479 (5th Cir. 1995) the Court declared that a conviction must be reversed if the evidence can be construed to give equal or nearly equal support for theories

of guilt and of innocence. Before there could be a conviction for drug conspiracy, the evidence must prove that the accused knew of the conspiracy and voluntarily joined it. *Deen, supra.* Although the element of knowledge may be proved by circumstantial evidence, a Defendant's knowledge of and participation in a conspiracy will not be lightly inferred *Deen* declared that simply "placing a defendant in a climate of activity that reeks of something foul" is not enough to support a conspiracy conviction.

In *United States v. Stanley*, 24 F.3d 1314, 1321 (11th Cir. 1994), a defendant's presence in a vehicle in which drugs were stored, even while the driver and another passenger were negotiating the sale of cocaine within his earshot, was insufficient to establish his participation in a conspiracy. In *United States v. Lopez -Ramirez*, 68 F.3d 438 (11th Cir. 1985) the count held the defendant's mere presence in a garage when a coconspirator unlocked a crate packed with cocaine and that combined with the defendant's presence in the house in which police officers later

discovered cocaine, was not a sufficient showing that the defendant had knowingly participated in a narcotics conspiracy, given the complete lack of evidence that that defendant was ever present at any meeting of key conspirators or that the defendant's name was ever mentioned at any such meeting or that the defendant knew the contents of the crate or had ever touched it. *Id* at page 441.

More recently the Court reaffirmed these holdings in *United States v. Hernandez,* 141 F.3d 1042 (11th Cir. 1998) where three defendants were convicted of homicide and a conspiracy to commit several crimes including a homicide and a fourth defendant was acquitted of the murder but was found guilty of the conspiracy. Although the evidence could show that *Hernandez* was present while others planned the murder, there was no evidence that he said anything even in passing from which a reasonable jury could conclude that he knew of the conspiracy to kill or joined in that conspiracy. The court went on to say that knowledge alone of the conspiracy would be an insufficient basis for conviction. *Id* at page

1055. Accordingly, this Petitioner's conviction should be reversed on such an insufficient basis for knowledge

(IV) THE DISTRICT COURT ERRED IN ALLOWING THE GOVERNMENT TO IMPEACH THE PETITIONER WITH STATEMENTS THAT HIS ATTORNEY MADE DURING THE COURSE OF OPENING STATEMENTS IN A PRIOR TRIAL.

The District Court allowed the Government over the Petitioner's objection to use a transcript of the opening statements given by previous counsel in the first trial on August 2, 1999 (R-328) to impeach the Petitioner even where the District Court claimed that it was surprised by the precedent relied upon for this ruling and was less than confident given the novelty of such an evidentiary maneuver (R18-164). The Government justified this maneuver claiming that the defense was inconsistent in the first trial and subsequent trials when in fact the defense was always that the Petitioners did not have any knowledge of the conspiracy and therefore was not a knowing participant. The contested information

was whether he confided incriminating details indicating contrary knowledge to Jonathan Smith who was only housed at the Dixie County Jail for 19 days while the Petitioner was there (R20-85). Counsel in opening statement had made the representation that the Petitioner would state he did not leave his cell within the first twenty days of his incarceration, and therefore could not have had the conversation with Smith (R-328). In actuality, the Petitioner did not realize that Smith was also known as "Jock Smooth" until he saw him on the witness stand, and it was then that he realized he had had one conversation with Smith (R20-225).

In *United States v. McKeon*, 738 F.2d 26 (2nd Cir. 1984) the Court discussed extensively when statements by counsel may be admissible against a client. *Id* at 30. In *McKeon* the defendant's attorney argued to the jury, in his opening statement, that the evidence would show that his client had innocently assisted packing certain crates and that another individual was actually responsible for an alleged unlawful shipment of weapons. *McKeon* at 28. In a

retrial, however, the same attorney's opening statements depicted his client's role differently. The prosecution then moved to admit into evidence the contradictory portion of the defendant's attorneys opening statements from the second trial. The trial judge admitted this statement as an admission of a party opponent. *Id* at 29. The Second Circuit Court of Appeal reviewed this practice in *United States v. Valenchia*, 826 F.2d 169, 172 (2nd Cir. 1987) and announced great care must be exercised in the criminal context in determining that circumstances under which attorney statements may be used against a client. That the Court declined to "subject such statements to the more expansive practice as is sometimes permitted under the rule allowing use of admissions by party opponent" (*McKeon* at page 31) the Court had a concern that "routine use of attorney statements against a criminal defendant risks impairment of the privilege against self incrimination, the right to counsel of one's choice [FN 1] and the right to the effective assistance of counsel."

In *United States v. Woo*, 917 F.2d 96 (2nd Cir. 1990) the Court approved the exclusion of case agent's affidavit and grand jury testimony description of a witness' conduct because that information was obtained by law enforcement sources and they declined to apply the *McKeon* rationale because it "did not concern the core of the evidence against Doyle and might well have caused the jury to draw unsubstantiated inferences concerning the conduct of the Government Agents. It might also have confused the issues with what was essentially a red herring. *McKeon* involved a fabrication in which the defendant had participated in which directly indicated his consciousness of guilt. 917 F.2d 96, 98.

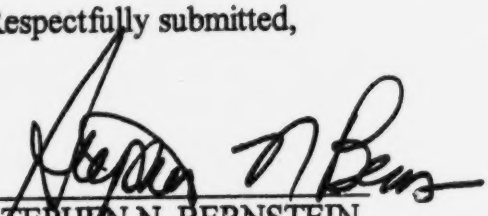
In *McKeon*, the Court announced that before permitting an evidentiary use of a prior jury argument the District Court must be satisfied that the prior argument involves assertion of fact that is inconsistent with the similar assertions in the subsequent trial, that the inconsistency is so clear and of a quality that it constitutes the equivalent of a testimonial statement by a defendant, that the

inference drawn by the prosecutor is a fair one and that there is no honest explanation for the inconsistency itself. *McKeon* at page 33. Here the explanation presented by the Petitioner does provide such an innocent explanation. This is simply not the *McKeon* situation and therefore the District Court should have excluded the prior opening statement because that allows the "leeway for advocacy and to lessen the burden of choice between the defendants not explaining the inconsistency to the jury or sacrificing other valuable rights." *Id* at p. 33.

The prosecution here attempted to discredit the Petitioner's testimony in his defense and used this as a major attack on the honesty of the Petitioner. This was a tool used by the prosecution to "trench upon other important policies". The evidentiary use of the prior jury argument should have been circumscribed here. This is an issue which has not been

viewed by this Court but in order to provide a clear guide in this area of evidentiary practice should be.

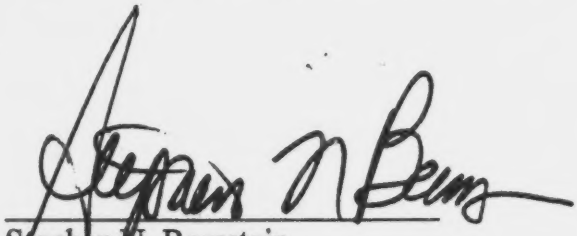
Respectfully submitted,

By: 

STEPHEN N. BERNSTEIN
Florida Bar Number 145799
Post Office Box 1642
Gainesville, Florida 32602
(352) 373-9555
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been forwarded by United States Mail to Robert Davies, Assistant United States Attorney, 104 North Main Street, Fourth Floor, Gainesville, Florida 32601; Aaron Glasscock, Register Number 11167-017, Federal Correctional Institution, Post Office Box 3000, Route 8, Fox Hollow Road, Manchester, Kentucky 40962; P. Michael Patterson, United States Attorney, 315 South Calhoun Street, Suite 510, Tallahassee, Florida 32301-1841; and Ted C. Curtis, Trial Counsel, Post Office Box 2916, Gainesville, Florida 32602-2916 on this 24 day of April 2002.



Stephen N. Bernstein
Attorney for Petitioner

Case No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AARON GLASSCOCK,
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v.

UNITED STATES OF AMERICA
Respondent

Petition for Writ of Certiorari from
the Eleventh Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Stephen N. Bernstein
Attorney for Petitioner
Post Office Box 1642
Gainesville, Florida 32602
(352) 373-9555

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Opinions and Orders of the Eleventh
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a. Decision

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10922

D.C. Docket No. 99-00015-CR-1-MMP

UNITED STATES OF AMERICA
Plaintiff – Appellee,

versus

AARON GLASSCOCK,
Defendant-Appellant.

Appeal from the United States District Court
For the Northern district of Florida

(November 20, 2001)

Before ANDERSON, CHIEF judge, BLACK, CIRCUIT Judge, and MORENO*, District Judge.

PER CURIAM:

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*Honorable Federico a. Moreno, U.S. district Judge for the southern District of Florida, sitting by designation.

'Aaraon Glasscock raises several issues on appeal including insufficiency of the evidence, a double jeopardy violation due to a retrial after a mistrial requested by Appellant, prosecutorial misconduct, and errors by the trial court in excluding favorable evidence as hearsay. Of these, only one warrants discussion: whether the district court erred in excluding statements made by co-conspirators as inadmissible hearsay.

> (b) The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: ...
> (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Assuming that the conversations by Boswell and Merold about their roles in the drug conspiracy were against

the declarants' penal interest, it does not necessarily follow that all statements within those conversations are self-inculpatory as part of a fuller confession. "The fact that a statement is self-inculpaorty does make it more reliable; but the fact that a statement is collateral to a self-inculpatory statement says nothing at all about the collateral statement's reliability." Williamson v. United States, 512 U.S. 594, 600, 114 S. Ct. 2431, 2435, 129 L. Ed.2d 476 (1994). Boswell and Merold's declarations to other inmates aout Aaron Glasscock's lack of knowledge of the conspiracy are collateral statements lacking the reliability that allows self-inculpatory statements to to be admitted without the benefit of cross-examining the declarant. In any event, the declarations that Aaron Glasscock had no knowledge of the conspiracy were not clearly corroborated as required before they were to be admitted to exculpate the accused. We find no abuse of discretion in the district judge's decision to

exclude the hearsay evidence, and find that the other errors claimed lack merit.

Accordingly, the judgment is

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10922

D.C. Docket No. 99-00015-CR-1-MMP

UNITED STATES OF AMERICA
Plaintiff – Appellee,

versus

AARON GLASSCOCK,
Defendant-Appellant.
_____/

On Appeal from the United States District Court
For the Northern district of Florida

(November 20, 2001)

Before ANDERSON, CHIEF judge, BLACK, CIRCUIT Judge, and MORENO*, District Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:

/S/

_____

CHIEF JUDGE

*Honorable Federico a. Moreno, U.S. district Judge for the southern District of Florida, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10922

District Court Docket No.
99-00015-CR-1-MMP

UNITED STATES OF AMERICA
Plaintiff – Appellee,

versus

AARON GLASSCOCK,
Defendant-Appellant.
_____/

Appeal from the United States District Court
for the Northern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: November 20, 2001
For the Court: Thomas K. Kahn, clerk
By: McCombs, Elaine